IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2602 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UMABEN SURYAKANT BHATT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2602 of 1988

MR JD AJMERA for Petitioner No. 1

MS DAXA I VYAS for Petitioner No. 1

MS SHRADHDHA TRIVEDI, AGP for Respondent No. 1

MR PRANAV G DESAI for Respondent No. 2

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/12/2002

CAV JUDGEMENT

1. The petitioner has approached this Court under Article 226 of the Constitution of India seeking relief that the respondents be directed to treat her as trained teacher and to give her all the consequential benefits which are made available to a trained teacher from the date of her appointment in the concerned school and further to declare order bearing No. 294 dated 16th April, 1983 as illegal, unconstitutional and invalid.

2. The facts in short can be stated as under :-

2.1. According to the petitioner she has passed the examination held by the then Secondary School Certificate, known as the old S.S.C., and Hindi Shikshak Sanad Examination and that she also possessed degree of Bhasha Ratna in Hindi language. She had got enrolled her name with the Employment Exchange at Baroda and pursuant to the advertisement issued by respondent no. 2 she had applied to be appointed as Teacher in the school. She was called for the interview on 12th January, 1983. The interview was taken by a committee comprising the Chairman and Administrative Officer of the District School Board and the District Education Officer of Baroda district. She was thereafter given appointment letter dated 19th February, 1983 by respondent no. 2 appointing her as Assistant Teacher in the pay-scale of Rs.290-560 in Vadi Hindi Mixed (Co.ed.) School No. 26 in Baroda. The said order also stated that the appointment was purely on temporary basis and she was liable to be relieved from the service without notice. According to the petitioner the qualifications possessed by her were considered equivalent to the P.T.C. and, therefore, she was given the appointment as trained teacher in the said school. It is the say of the petitioner that she received another letter dated 16th April, 1983 from respondent no. 2 informing her that the qualification possessed by the petitioner were not that of a trained teacher and the earlier order was required to be amended to place the petitioner in the pay-scale of non-trained teacher of Rs.260-350. The petitioner therefore, made several attempts to convince respondent no. 2 to treat her as trained teacher in view of the qualifications possessed by her and not to place her in the scale of untrained teacher. However, this did not yield any positive result in favour of the petitioner. Hence, she approached the Civil Court by filing a suit at Baroda which ofcourse was later on withdrawn and thereafter the present petition has been filed seeking the aforesaid reliefs.

3. Upon issuance of notice the respondents

have appeared before this Court and have contested the petition mainly on the ground that the petitioner is not possessing the qualifications prescribed by the Government for trained teacher and, therefore, she cannot be treated as a trained teacher despite the fact that she has passed examination of Hindi Shikshak Sanad and Bhasha Ratna in Hindi. It is the say of the respondents that qualification of P.T.C. is compulsory for being considered as trained teacher and the petitioner though she was given several opportunities to obtain the necessary training, did not avail of these opportunities and hence she cannot be considered as trained teacher. The further say of the respondents is that the appointment to the petitioner was given in anticipation of Government's approval and her clearing the requisite P.T.C. examination and acquiring the necessary qualification within the prescribed time limit. However, she had failed to do so and, therefore, it was not possible for the respondents to continue her in the service as trained teacher. The respondents also pointed out that all the teachers appointed alongwith the petitioner had acquired the necessary qualification by passing P.T.C. examination but the petitioner had not done so and, therefore, her case was treated on different footing by the respondents. According to the respondents, the present petition did not have any merit and, therefore, it was required to be dismissed.

4. Mr. J.D. Ajmera, the learned counsel appearing for the petitioner has submitted that the petitioner was given appointment on the basis of her academic qualifications which are considered to be equivalent to the P.T.C. and, therefore, the respondents are not correct when they say that the appointment of petitioner was not given as trained teacher. He has also submitted that her interview was held by the committee comprising the representatives of respondent no. 2 as well as respondent no. 1 and after due scrutiny of entire educational record of the petitioner, she was selected for the post. It was, therefore, not open now for the respondents to say that the petitioner did not possess due qualifications to be considered as trained teacher. Mr. Ajmera has also placed reliance on the resolution dated 31st May, 1965 passed by the Department of Education and Labour of State of Gujarat wherein it has been prescribed that for a trained primary teacher a person should hold the following qualifications over and above the passing of S.S.C. Examination or any equivalent examination, viz -

1. Hindi subject teacher - one year certificate

course examination of full time of Gujarat Vidhyapith passed or Junior Hindi Shikshak Sanad Examination taken by the Government passed,

2. D.T.E.C. Examination
3. Physical Education Certificate of Physical Education Institute
4. Such subject teachers would be treated as equivalent to Junior P.T.C. and salary admissible to Junior P.T.C. would be given to them.

He has placed emphasis on the first clause and has submitted that since the petitioner has been appointed as teacher in Hindi school for teaching subject of Hindi this clause will apply in her case and since she possesses the educational qualifications prescribed in the said clause over and above the passing of S.S.C. Examination, she has to be considered as equivalent to P.T.C. and hence a trained teacher. He has also drawn attention of the Court to the clarification issued by the Deputy Director of Education, Office of the Director of Primary Education, Gandhinagar, addressed to the Secretary, Education Department, Government of Gujarat, dated 3rd February, 1988 in the case of the petitioner that since she has passed Hindi Shiksha Sanad examination, she has to be put on par with the P.T.C. candidates and that she must be given the same pay-scale as made available to the P.T.C. candidates. He has also clarified that if the committee is satisfied that though the candidate's mother tongue is Gujarati but he or she is able to teach the Hindi subject properly, such person could be permitted to be appointed in the primary school having Hindi language as medium of education as such permission has already been granted by the Government in view of the resolution dated 31st May, 1965. Mr. Ajmera has, therefore, submitted that when the Government itself takes up such a stand, there is no reason for the respondents to take different view and treat the petitioner as untrained teacher.

4.1. As against that, Ld. A.G.P. Ms. Trivedi appearing for the respondent no. 1 has stated that the aforesaid permission was granted in view of the fact that at the relevant point of time there were no rules available laying down the criteria for considering trained and untrained teacher. However, the Government has later on prescribed certain rules wherein passing of P.T.C. is prescribed as the criteria for trained teacher and that was the precise reason that all other teachers appointed alongwith the petitioner have appeared and cleared the said examination. It is further submitted

that the first order though did not mention clearly that the petitioner was considered to be untrained teacher, on realizing that mistake shortly thereafter another order was issued amending the earlier order, therefore, petitioner cannot take advantage of such error in putting up a case that she was appointed as a trained teacher.

4.2. Mr. P.G. Desai, the learned counsel for respondent no. 2 has submitted that in view of the rules prescribed by the Government, petitioner cannot be termed as trained teacher and as laid down by the Apex Court when the trained teachers are available, untrained teachers cannot be given appointment or continued in service. He has, therefore, placed reliance on the following decisions :-

i. State of Rajasthan v/s. Shyam Lal Joshi reported in AIR 1994 S.C. 1409
ii. Ram Sukh v/s. State of Rajasthan reported in AIR 1990 S.C. 592,
iii. J.S. Gosai v/s. State of Gujarat reported in 2000 (3) G.L.H. 557.

5. Having gone through the record of the petition as well as the rival contentions, it appears that admittedly the petitioner has not cleared P.T.C. but she has passed S.S.C. Examination, Bhasha Ratna Examination with teaching in Hindi subject for one year known as Hindi Shikshak Sanad Examination and Sanskrit Bhushan Examination. It also clearly appears that her qualification was considered at the time she was interviewed by the committee which comprised the representatives of the District Education Board as well as the Education Department of the Government of Gujarat and thereafter she was given appointment in Vadi Hindi School at Baroda. Though on temporary basis, she was placed in the pay-scale of Rs.290-560 i.e. the scale meant for trained teacher. It was at a later point of time i.e. in the month of April 1983 another order was issued placing her in the pay-scale of untrained teacher. The order of appointment at Annexure-A if perused, does not envisage that the appointment was given to the petitioner subject to the condition that she would have to clear P.T.C. Examination nor does it indicate that her educational qualification required her to be appointed as untrained teacher. It also does not say that the said order was made in anticipation of the approval that may be received from the Government of Gujarat. These facts have been brought to the notice of the petitioner subsequently i.e. by letter dated 16th April, 1983. In light of this, the question that would

arise is whether the petitioner was required to comply with the directions contained in the subsequent letter and is it proper for the respondents to place her in a lower scale meant for untrained teacher.

5.1. As stated above, Mr. Ajmera has placed great reliance on resolution dated 31st May, 1965. If that resolution is perused closely, it clearly lays down requisite qualifications prescribed for appointment of teachers in the subjects like Hindi, Drawing, etc. Qualifications prescribed at item no. 1 states passing of Hindi Shikshak Sanad Examination or having completed course of one year in teaching Hindi subject in Gujarat Vidhyapith. If the qualifications of the petitioner are perused, over and above Hindi Shikshak Sanad Examination, she has also cleared different examinations not only in Hindi but even in Sanskrit. Apart from this, the clarification issued in the case of the petitioner herself the Deputy Director of Primary Education has said that these qualifications are treated as equivalent to the P.T.C. and the teachers holding such qualifications should be put on par with the P.T.C. candidates. If that be the position, the petitioner even if she has not cleared P.T.C. can be said to be a trained teacher on the basis of the stand taken by the Government itself. The respondents have all throughout submitted that there are rules which have been framed later on which clearly prescribe P.T.C. as criteria for trained teacher and the petitioner was required to take the requisite training for becoming the trained teacher. The aforesaid resolution was issued when these rules were not in existence. However, at the time when the petitioner came to be appointed, these rules were already framed and implemented. Though this contention has been raised several times by the counsels for the respondents, it is very unfortunate that these rules have not been brought to the notice of the Court. In fact this Court was constrained to pass order dated 10th May, 2002, which is reproduced here, will give the clear picture of the callous attitude on the part of the respondents in production of the said rules before this Court. The said order is as under :-

> "This matter has been listed for hearing for 45 times. Since last six occasions it is being listed before me for hearing. With a view to decide the question with regard to trained teacher, relevant rules are required to be perused. Ld. AGP Mr. Pujari has prayed for time on all these occasions to produce the same. Last time when the matter was called out and when

> Mr. Pujari requested for granting of adjournment for the same reason, it was made very clear to him that on the next hearing i.e. today the relevant rules should be made available to the Court. Today Mr. Pujari has given a copy of the rules, which are not relevant for the purpose. In the circumstances, one more chance is being given to Mr. Pujari to produce the correct and relevant rules. It is also made very clear that if these rules are not produced on the next date of hearing, the Court will proceed on a presumption that no such rules exist. S.O. to 21/6/2002. To be treated as part-heard."

Even thereafter the respondents had been granted 4 to 5 chances to produce those rules, but they failed to do so. When no such rules have been brought to the notice of the Court despite the repeated opportunities having been given to the respondents, the Court is, therefore, constrained to presume that no such rules exist. In view thereof, I have to go by the stand taken by the Government itself in the aforesaid resolution and the clarification. These documents make it very clear that the petitioner is equally qualified and she can well be considered as trained teacher. If that be so, the stand taken by respondents in this petition that petitioner does not possess requisite qualifications for being considered as trained teacher cannot be accepted. It may be that other teachers have resorted to the training prescribed for P.T.C., but that sole factor cannot be sufficient to persuade me that it is the only criterian for conferring the status of trained teacher. There cannot be any dispute with regard to the ratio laid down by the decisions cited before me by Mr. Desai. However, when there is nothing before me to hold that the petitioner is not a trained teacher, the aforesaid decisions will not apply in this case. In this view of the matter, I am not inclined to accept the say of the respondents that the petitioner is untrained teacher and that she has to be placed in the lower scale meant for untrained teacher.

6. In view of the above, the order at Annexure-C dated 16th April, 1983 is required to be quashed and set aside, as it is held by this Court that the petitioner is holding all the qualifications meant for a trained teacher and the respondents are, therefore, directed to consider the petitioner as trained teacher and to make all the benefits available to such trained teacher to her from the date of her appointment in the employment, on or before 15th February, 2003. The

petition is, therefore, allowed. Rule made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.